

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SIMPLEX MANUFACTURING CO.,

Movant,

v.

KEN CHIEN, et al.,

Respondents.

CASE NO. C12-835RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the court on the motion of Movant Simplex Manufacturing Co. (“Simplex”) to compel Respondents Ken Chien and KChien, LLC to respond to two subpoenas duces tecum, as well as Respondents’ cross-motion to quash the subpoena. Dkt. ## 1, 12. For the reasons stated below, the court DENIES Simplex’s motion to compel and GRANTS Respondents’ motion to quash.

**II. BACKGROUND**

Simplex is an aviation equipment company embroiled in litigation with its former CEO, Steven Daniels. According to the complaint in that litigation, which is pending in the United States District Court for the District of Oregon, Mr. Daniels has competed with Simplex in violation of one or more contracts and has engaged in unfair competition. *See Simplex Mfg. Co. v. Daniels*, No. CV11-224JO (D. Ore.) (complaint filed Feb. 22, 2011).

1 To prove its allegations, Simplex has relied in part on subpoenas to people and  
2 companies with whom Mr. Daniels is allegedly engaged in business. Among them are  
3 Mr. Chien and KChien, the limited liability company of which he is the sole owner and  
4 employee. Both Mr. Chien and KChien are Washington residents. After an ineffective  
5 attempt at service, Simplex served Mr. Chien and KChien on January 26, 2012, with  
6 subpoenas duces tecum and served Mr. Chien with a deposition subpoena. All three  
7 subpoenas issued from this court.

8 Mr. Chien, who had no attorney at the time, responded three days later by  
9 emailing the Simplex attorney who issued the subpoena. He stated as follows: "I am now  
10 in receipt of your subpoena. It is my intent to make myself available for a deposition at a  
11 day to be set by Steven Daniels' lawyer." Hughes Decl. (Dkt. # 1-1), Ex. D. Mr. Chien  
12 did not mention the subpoenas for documents. Working with Mr. Daniels' attorney, Mr.  
13 Chien and Simplex arranged his deposition for March 14 in Oregon. So far as the record  
14 reveals, Simplex did not address the subpoenas for documents again until March 8, when  
15 Simplex's attorney demanded that Mr. Chien produce responsive documents before his  
16 deposition. Mr. Chien appeared for his deposition on March 14, but produced no  
17 documents.

18 Simplex now moves to compel Mr. Chien and KChien to respond to the document  
19 subpoenas. Mr. Chien, who now has counsel, filed a cross-motion to quash.

### 20 **III. BACKGROUND & ANALYSIS**

21 Civil litigants are entitled to discovery of "any nonprivileged matter that is  
22 relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). A discovery request  
23 need not call for evidence that would be admissible at trial, so long as the request  
24 "appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* The  
25 court can limit discovery for numerous reasons, including that the discovery sought "can  
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1 be obtained from some other source that is more convenient, less burdensome, or less  
2 expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i).

3       These general discovery limitations apply with equal force to subpoenas to third  
4 parties. *Gonzales v. Google, Inc.*, 234 F.R.D. 674, 679-80 (N.D. Cal. 2006). A court can  
5 quash or modify a subpoena that does not seek information that falls within the broad  
6 scope of permissible discovery. *Id.* at 680. A party issuing a subpoena “must take  
7 reasonable steps to avoid imposing undue burden or expense” on the subpoena’s target,  
8 and the court from which the subpoena issues must enforce this restriction. Fed. R. Civ.  
9 P. 45(c)(1); *see also* Fed. R. Civ. P. 45(c)(2)(B)(ii) (noting that when issuing an order  
10 resolving a motion to compel subpoena compliance, the court “must protect a person who  
11 is neither a party nor a party’s officer from significant expense resulting from  
12 compliance”). The apparent relevance of the information a subpoena seeks informs the  
13 extent to which its burden is undue, and the court must balance relevance, the requesting  
14 party’s need for the information, and the hardship to the subpoena’s target. *Google*, 234  
15 F.R.D. at 680. The party opposing the subpoena bears the burden of showing that it is  
16 unduly burdensome. *Goodman v. United States*, 369 F.2d 166, 169 (9th Cir. 1966). The  
17 court’s decision on a motion to quash a subpoena or a motion to compel compliance is a  
18 matter of discretion. *Mattel Inc. v. Walking Mt. Productions*, 353 F.3d 792, 813 (9th Cir.  
19 2003).

20       Before applying these general discovery principles to this dispute, the court  
21 addresses Simplex’s threshold contention that Mr. Chien’s failure to object to the  
22 document subpoenas waives his right to seek relief from the court. Rule 45 allows the  
23 target of a subpoena to object to it “before the earlier of the time specified for compliance  
24 or 14 days after the subpoena is served.” Fed. R. Civ. P. 45(c)(2)(B). Those objections  
25 place the burden on the party propounding the subpoena to seek an order of the court  
26 compelling compliance. *Id.* In the ordinary case, failure to object timely waives the right

1 to object later. *McCoy v. Southwest Airlines Co.*, 211 F.R.D. 381, 385 (C.D. Cal. 2002)  
2 (“[A] nonparty’s failure to timely make objections to a Rule 45 subpoena duces tecum  
3 generally requires the court to find that any objection, including attorney-client privilege,  
4 has been waived.”). Courts recognize exceptions where “the subpoena is overbroad on  
5 its face and exceeds the bounds of fair discovery,” the subpoena’s target is “a non-party  
6 acting in good faith,” and the target and the subpoenaing party are in contact regarding  
7 the subpoena before the target challenges the subpoena. *Id.* (quoting *Am. Elec. Power*  
8 *Co. v. United States*, 191 F.R.D. 132, 136 (S.D. Oh. 1999)).

9       The court declines to impose the harsh consequences of waiver on Mr. Chien. He  
10 contacted Simplex’s attorney only three days after he received proper service of the  
11 subpoenas. He did not mention the document subpoenas, but neither did Simplex’s  
12 counsel until a few days before the deposition that Mr. Chien agreed to attend. Simplex’s  
13 counsel had the opportunity at the deposition to discuss compliance with the document  
14 subpoenas, but he did not. Simplex could have used the deposition to establish that  
15 responsive documents existed and that they had relevance to the Oregon litigation, but it  
16 did not.

17       The document subpoenas are overbroad on their face. The one Simplex served on  
18 Mr. Chien seeks every document with any conceivable relation to Mr. Chien’s  
19 relationship with Mr. Daniels (and at least five people and entities who Simplex deems  
20 “Daniels affiliates”) since Mr. Daniels left Simplex in 2010. If there is a document  
21 related to Mr. Daniels’ relationship with Mr. Chien that is not within the scope of the 12  
22 requests attached to the subpoena, the court cannot imagine what it is. At the same time,  
23 Simplex has given the court far too little explanation of its claims in the Oregon litigation  
24 and the relevance of Mr. Daniels’ relationship with Mr. Chien to those claims. The court  
25 can only conclude that the subpoena is overbroad. The subpoena to KChien is no better.  
26 It not only duplicates most of the same overbroad requests, it includes a request for  
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1 KChien to produce forensic images of every electronic device in its possession to which  
2 Mr. Daniels has had access.

3 Mr. Chien claims that the subpoenas are not only overbroad, they would require  
4 him to disclose confidential or trade secret information related to his business. He has  
5 provided relatively little specific detail to support that assertion, but the court has no  
6 doubt that subpoenas as broad as Simplex served would require the disclosure of  
7 competitively sensitive information. A protective order in place in the Oregon litigation  
8 would provide some protection to Mr. Chien, but he is understandably wary about  
9 placing competitively sensitive information in the hands of a competitor.

10 On this record, the court concludes that the subpoenas are overbroad and beyond  
11 the scope of fair discovery, that Mr. Chien has acted in good faith,<sup>1</sup> and that despite his  
12 contacts with Simplex, Simplex made no good faith attempt to narrow the scope of the  
13 document subpoenas. The court will accordingly quash the subpoenas. It is possible that  
14 some of the requests within the subpoenas are narrowly drawn to seek relevant  
15 information, but Simplex has not given the court enough information to reach that  
16 conclusion. *See Mattel*, 353 F.3d at 813 (quashing subpoena that contained some  
17 reasonable requests where other requests were “way too broad for the explanation given  
18 by [the party issuing the subpoena],” and moving party had not attempted to “tailor the  
19 information request to the immediate needs of the case”).

20 The court’s ruling today is not necessarily the end of Simplex’s efforts to obtain  
21 documents from Mr. Chien. It is possible that Simplex might propound a narrower  
22 subpoena, might tailor that subpoena carefully to avoid unnecessary disclosure of  
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24 <sup>1</sup> The record reveals that Mr. Chien has business disputes with Simplex and its current CEO. His  
25 apparent ill-will toward Simplex is evident in, for example, the transcript of his deposition. The  
26 court’s finding that Mr. Chien has acted in good faith is based largely on his willingness to  
27 appear quickly for deposition in response to the subpoenas. Mr. Chien’s refusal to address the  
28 document subpoenas until Simplex brought him to court weighs against a finding of good faith,  
and the court cautions him that adopting the same approach in response to a future subpoena  
would place him at risk of a contempt finding or an award of sanctions.

1 confidential information, and might work in good faith with Mr. Chien to reach  
2 reasonable compromises. If it does, Mr. Chien must either produce documents or he  
3 must promptly object to the subpoenas. In the event the parties end up before this court  
4 again, the court expects Simplex to do a better job explaining the relevance of the  
5 documents it seeks and expects Mr. Chien to do a better job explaining his reasons for  
6 withholding documents.

#### 7 IV. CONCLUSION

8 For the reasons stated above, the court DENIES Simplex's motion to compel (Dkt.  
9 # 1) and GRANTS Mr. Chien's and KChien's motion to quash (Dkt. # 12). If Simplex  
10 wishes to issue new subpoenas in compliance with this order, it may do so. If the parties  
11 present no further disputes to the court before October 31, the court will close this  
12 subpoena enforcement action.

13 DATED this 31st day of August, 2012.

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16 The Honorable Richard A. Jones  
17 United States District Court Judge  
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